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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,189	01/12/2001	Charles R. Sperry	D-20086-01	2431
28236	7590	02/13/2004	EXAMINER	
CRYOVAC, INC. SEALED AIR CORP P.O. BOX 464 DUNCAN, SC 29334			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	16

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/760,189

Applicant(s)

SPERRY ET AL.

Examiner

Thanh K Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This action is in response to applicant's Request for Reconsideration, Paper No. 15, received on December 29, 2003.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4-6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sperry et al. (5,996,848) (hereinafter Sperry '848).

Sperry '848 discloses a fluid dispenser comprising:

a housing 148 defining an internal chamber 188, and the housing comprising: an inlet 172 or 174 for receiving a fluid product into the housing and being in fluid communication with the internal chamber, and a discharge port 153 through which fluid product may exit the housing, and the discharge port being in fluid communication with the internal chamber; and

a valving rod 218, 268 disposed in the housing and being movable within the internal chamber between an open position, in which fluid product may flow through the internal chamber and exit the housing via the discharge port, and a closed position, in which fluid product is substantially prevented from flowing through the internal chamber (figures 28 & 29), the valving rod comprising:

a central bore 230, at least one inlet 256 for receiving a cleaning solvent, the inlet being in fluid communication with the bore, and one or more outlet ports 234, 236 in fluid communication with the bore, the outlet ports being capable of directing cleaning solvent radially from the bore and against the interior surface bounding the internal chamber to facilitate the removal of at least a portion of any fluid product or derivatives thereof that may be in adherence with the interior surface (figure 28 & column 37, lines 12-15).

Sperry '848 further discloses the housing has a longitudinal axis; the bore of the valving rod is substantially aligned with the longitudinal axis; and the valving rod translates between the open and closed positions along the longitudinal axis (figures 25, 27, 28A & 29); & 29); the discharge port has an interior surface that defines part of the internal chamber of the housing; and the valving rod is adapted to direct cleaning solvent against the interior surface of the discharge port when the valving rod is in the closed position (column 35, lines 42-53); the housing further comprises an internal reservoir 200 (and the space between 290 and 220) in which cleaning solvent may be contained, the internal reservoir being in fluid communication with the at least one inlet into the central bore of the valving rod (figure 28); a portion of the valving rod is movable through the internal reservoir (figures 25, 27, 28 & 29); the housing has at least one inlet 166 (figure 9) in fluid communication with the internal reservoir so that cleaning solvent from an external source may be added to the reservoir as needed (column 38, lines 67 & column 39, lines 1-3); the dispenser is adapted to dispense a fluid product selected from polyols, isocyanates, and mixtures of polyols and isocyanates (column 1, lines 32-

44); and the cleaning solvent is selected from glycols, ethers, and mixtures of glycols and ethers (column 36, lines 12-16 & lines 26-30).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sperry et al. (5,996,848).

As discussed above in paragraph 3 of this office action, Sperry '848 discloses the claimed invention, but not expressly discloses the mechanism to apply a pressure ranging from about 2 to about 12 psi to the internal reservoir.

Sperry '848, figure 1 discloses that means 1106 provide mechanism to supply solvent to dispenser, and column 24, lines 12-17 & lines 34-39 discloses that pressure is applying to the internal reservoir. Furthermore, the phrase "sufficient pressure" recited in column 24, line 15, implies that any ranges of pressure, including a pressure ranging from about 2 to 12 psi, is inherently taught by Sperry '848. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to apply a pressure ranging from about 2 to 12 psi to the internal reservoir to insure a sufficient pressure is applied to the solvent reservoir so that the cleaning solvent can be delivered through out the dispenser system.

6. Claims 10, 11, 13-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sperry et al. (5,255,847) in view of Sperry et al. (5,996,848).

Sperry '847 discloses a mechanism that conveys a web of film along a predetermined path of travel, the film web comprising two juxtaposed plies of plastic film that define a partially-formed flexible container; one or more devices for sealing the plies of plastic film together thereby enclosing the fluid product therein (figure 1, column 1, lines 6-10 and lines 19-28); and a conduit providing fluid communication between the internal reservoir and the discharge port (figure 1).

Sperry '847 discloses the claimed invention, except for the fluid dispenser as recited in claims 10-15 and 17-20.

As discussed above in paragraph 4 of this office action, Sperry '848 discloses the fluid dispenser as recited in claims 10, 11, 13-15 and 17-20. The Sperry '848 dispenser provides a system that puts out a precise and consistent amount of high quality foam, preventing the obstruction of any chemical to the inlet port, and avoiding any degrading foam precursor build up in general (column 6, lines 51-57).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Sperry '847 dispenser system by incorporating the improved dispenser system as taught by Sperry '848 for a higher output, reliable and requires less maintenance system.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sperry et al. (5,255,847) in view of Sperry et al. (5,996,848).

As discussed above in paragraph 6 of this office action, the modified Sperry '847 and Sperry '848 discloses the claimed invention, except for not expressly discloses the mechanism to apply a pressure ranging from about 2 to about 12 psi to the internal reservoir.

Sperry '848, figure 1 discloses that means 1106 provide mechanism to supply solvent to dispenser, and column 24, lines 12-17 & lines 34-39 discloses that pressure is applying to the internal reservoir. Furthermore, the phrase "sufficient pressure" recited in column 24, line 15, implies that any ranges of pressure, including a pressure ranging from about 2 to 12 psi, is inherently taught by Sperry '848. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to apply a pressure ranging from about 2 to 12 psi to the internal reservoir to insure a sufficient pressure is applied to the solvent reservoir so that the cleaning solvent can be delivered through out the dispenser system.

### ***Response to Arguments***

8. Applicant's arguments filed June 16, 2003 have been fully considered but they are not persuasive.

In response to the Applicant's argument that Sperry '848 is neither taught or suggested that the outlet ports of the valving rod direct cleaning solvent "radially outwards ... and against said interior surface of said discharge port when said valving rod is in said closed position ...", Sperry '848, column 37, lines 11-15 recited "Solvent 310 ... where upon it flows radially out through ports 234 and 236 ...". Furthermore, it has been held that the recitation that an element is "capable of" (as recited in claim 1, line 19 and in

claim 10, line 28) performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding to claim 20, in response to the Applicant's argument that "Sperry '848 does not disclose a "conduit providing fluid communication between said internal reservoir and said discharge port to deliver cleaning solvent to said discharge port, said conduit positioned externally of said internal chamber.", the examiner disagrees. Column 25, line 48, discloses the "solvent introduction port 166". Furthermore, there has to be an external conduit (although not shown) to deliver solvent from the solvent chamber 140 (figure 5) or solvent supply means 1106 to the dispensing assembly 1102 as shown in figure 1.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

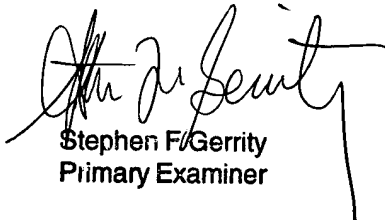
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen F. Gerrity  
Primary Examiner

Tkt  
February 12, 2004.